

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 03-0130
Corporate Income Tax
For the Years 1999, 2000, 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration - Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent (10 percent) negligence penalty.

STATEMENT OF FACTS

Taxpayer is a business engaged in the leasing of computer hardware and other technological equipment. Taxpayer's offices are located in another state, and Taxpayer does not maintain an office or personnel in Indiana. The property that Taxpayer leases is subject to a security interest in the state in which it is located and notification in the event it is moved to another state; however, Taxpayer does not control the location of the property with very minor exceptions. As a result of Department audit, Taxpayer was assessed gross income tax with respect to its income from leases located in Indiana.

The due date of the Taxpayer's Indiana Corporate Income Tax return for the period ending March 31, 2001 was July 16, 2001. However, final payment was not received by the Department until January 15, 2002. Therefore, the 10 percent penalty plus interest was applied to the late payment. In regards to late payments, payment is applied first to the penalty portion and then to the interest and any remainder is then applied to the base tax. This caused the tax due to be underpaid for the period resulting in additional tax due. The notice received also included a IT-2220 penalty for underpayment of estimated corporate income tax. This penalty was abated by the Department's audit review section on November 17, 2005. The taxpayer protests the remaining 10 percent penalty.

I. Tax Administration-Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent (10 percent) negligence penalty that the Department has imposed. The amount Taxpayer owed before the audit adjustments and before

the imposition of the IT-2220 underpayment of estimated tax penalty was \$818.47. The September 13, 2005 billing in the amount of \$1,834.22 was based upon the supplemental audit adjustments but before the waiver of the IT-2220 penalty. The November 21, 2005 bill of \$1,182.92 was based on the supplemental audit changes that took into account the abatement of the IT-2220 penalty.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code 45 IAC 15-11-2 further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer argues that penalty should be waived in this case. The taxpayer argues that they did not foresee the dramatic increase in either the Gross Income Tax or Supplemental Net Income Tax. The taxpayer contends that the prepayments totaling \$1,673 for the tax year ending March 31, 2001 would exceed the eventual liability. The taxpayer's March 31, 2000 (prior year) tax

liability amounted to \$1,673 so the taxpayer states that it had paid in more than 100 percent of the prior year's tax liability as of the original due date. The taxpayer argues that the estimated payments in the amount of \$1,675 represented a best faith estimate of the expected liability. The taxpayer states, "It is our opinion that the four fold increase in tax liability experienced by the taxpayer was not foreseeable at the original due date of the return for the tax year ended March 31, 2001. Therefore, the taxpayer's inability to foresee and accurately estimate its liability was not willful."

While its changes in procedures are certainly commendable, taxpayer's failure to utilize the other appropriate procedures in the first place did not meet the duty of reasonable care expected of a taxpayer. Further, even accepting taxpayer's statement of an excellent compliance history, in this instance taxpayer's operations did not meet the duty of ordinary business care expected of taxpayers.

Under IC 6-8.1-10-2.1, if the taxpayer fails to pay the full amount of tax due on the tax return on or before the due date of the return, the tax due is subject to penalty and interest. The due date of the Taxpayer's Indiana Corporate Income Tax return for the period ending March 31, 2001 was July 16, 2001. However, final payment was not received by the Department until January 15, 2002. Therefore, the 10 percent penalty plus interest was applied to the late payment.

FINDING

Taxpayer's protest is denied.

BK/JM/DK